

in order to allow the reissue application. Applicants will supply the original patent or the required affidavit or declaration upon the indication of allowable subject matter.

The Examiner also provisionally rejects claims 33-60 under the judicially created doctrine of obviousness-type double patenting based on claims 50 and 51 of copending application Serial No. 09/287,664. The Examiner comments that the conflicting claims although not identical do not contain subject matter patentably distinguished from one another. The Examiner observes claims 50 and 51 of the copending application teach the product produced by a process comprising oxidizing metal oxide precursors and accelerants similar to those of claims 33-60 of the present application with the difference that claims 33-60 claim a film comprising metal oxides and the deposition products of an accelerator.

Applicants will file a terminal disclaimer in the appropriate application upon the indication of allowability of both applications, since the Patent Office may not allow one of the applications which forms the basis of this double patenting rejection.

Applicants also point out that when a provisional double patenting rejection remains as the sole rejection in an application otherwise in condition for allowance, the Manual of Patent Examining Procedure requires the Examiner to withdraw the rejection in the earliest filed application and permit it to issue as a patent. MPEP Section 804(I)(B), p. 800-15, July 1998.

If filing this response requires an extension of time pursuant to 37 C.F.R. § 1.136 and payment of an extension fee or other fee, any of which this response fails to account for, applicants' attorneys request such an extension, and payment of any fees from their Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: Robert J. Eichelburg
Robert J. Eichelburg
Reg. No. 23,057

Dated: April 21, 2000